

ARKANSAS TOBACCO CONTROL BOARD

Enabling Laws

Act 2015 of 2005

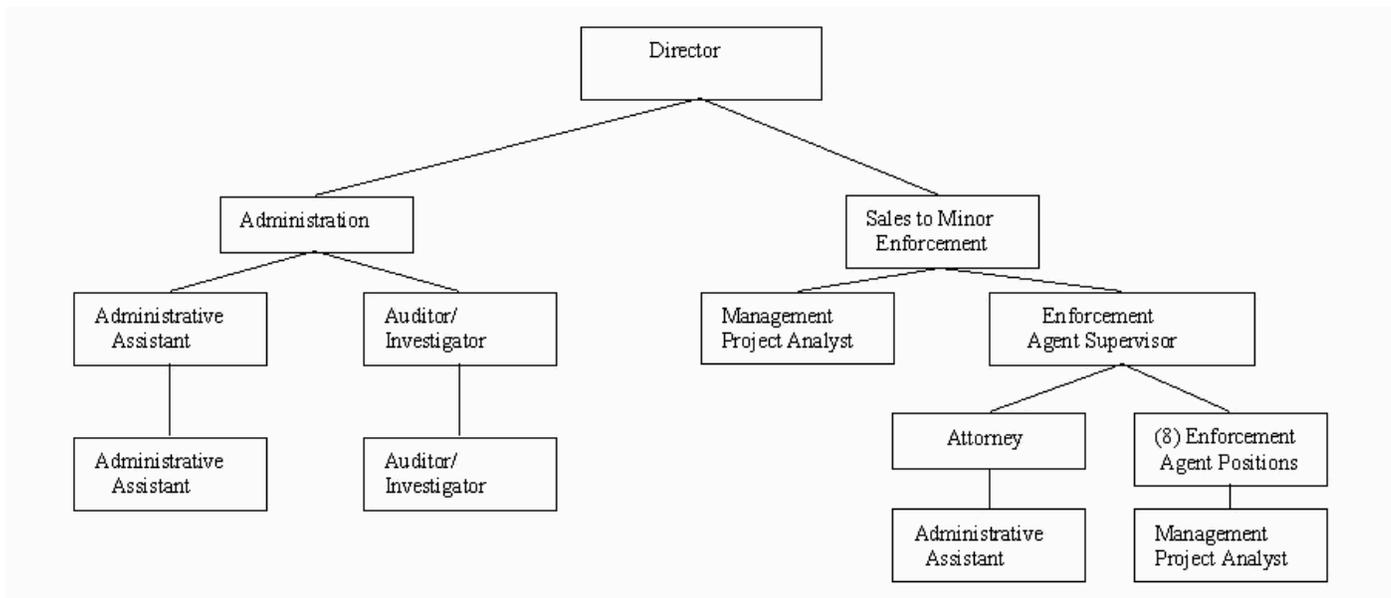
A.C.A. §26-57-201 et seq.

History and Organization

The Arkansas Tobacco Control Board (ATCB) was created with Act 1337 of 1997 by the Legislature, who authorized an eight (8) member Board appointed by the Governor. The Board was constituted as follows: Two (2) members of the Board shall be tobacco products wholesalers; two (2) members shall be tobacco products retailers; and four (4) members shall be members of the public-at-large who are not public employees or officials, at least one of which shall be an African American, and two (2) of whom shall be selected from a list of at least eight (8) candidates supplied to the Governor by the Arkansas Medical Society.

On July 19, 2001, the Board entered into a subrecipient contractual agreement with the Arkansas Department of Health, now known as Department of Health and Human Services, Division of Health, to receive monies from the Master Tobacco Settlement Fund for the enforcement of Sales to Minors Compliance Checks. Our mission is to enforce the state laws and regulations pertaining to tobacco sales for the protection of the citizens of Arkansas.

This Agency is to enforce the Unfair Cigarette Sales Act. To permit and regulate anyone selling cigarette and tobacco products as retailers, wholesalers, cigarette vending machine businesses or sales representatives for either a wholesaler or manufacturer doing business in the State of Arkansas; to enforce all cigarette and tobacco products laws falling under the jurisdiction of the Arkansas Tobacco Control Board; to perform Sales to Minors Compliance Checks and enforce any violations of the Law regarding those sales; and to perform audits of in-state and out-of-state permittees. We're to enforce Act 1368 of 2001 which amends the Arkansas Code to provide that failure to pay State and Local Taxes shall prevent the issuance or renewal of Cigarette and Tobacco Permits. Also to enforce Act 1073 of 2003, A.C.A. §26-57-260 and §26-57-261, which sets out severe penalties that can be levied against wholesalers and retailers that purchase, receive, store or sell cigarettes from manufacturers not participating in the Master Settlement Agreement or are not paying into an escrow account.



Agency Commentary

The Tobacco Control Board Administration is responsible for permitting and regulating anyone selling cigarette and tobacco products as retailers, wholesalers, cigarette vending machine businesses or sales representative for either a wholesaler or manufacturer doing business in the State of Arkansas. The Agency enforces the Unfair Cigarette Sales Act, Act 1368 of 2001, which amends the Arkansas Code to provide that failure to pay State and Local Taxes shall prevent the issuance or renewal of Cigarette and Tobacco Permits; Act 1073 of 2003, A.C.A. §26-57-260 and §26-57-261, which sets out severe penalties that can be levied against wholesalers and retailers that purchase, receive, store or sell cigarettes from manufacturers not participating in the Master Settlement Agreement or are not paying into an escrow account; and all other cigarette and tobacco products laws falling under its jurisdiction. The funding source for this appropriation is general revenue.

The Tobacco Control Board Administration requests to reallocate \$3,000 of Operating Expense appropriation each year to Conference & Travel Expenses to allow for Auditor/Investigator training on industry issues.

Tobacco Control Board Sales to Minors Enforcement is responsible for performing compliance checks and enforcing any violations of the laws concerning Sales to Minors. Funding for this appropriation is received from the Master Tobacco Settlement Fund through DHHS, Division of Health.

Sales to Minors Enforcement is asking for an increase in Capital Outlay of \$18,800.00 in FY2008 and \$12,800.00 in FY2009. Four (4) enforcement vehicles will need to be replaced in both FY2008 and FY2009. These vehicles currently range in mileage from 75,000 to 130,000 miles. Once a vehicle reaches the 75,000 mile mark or above, maintenance costs begin to rise making it cost prohibitive for the Agency to retain. The Sales Tax costs will be \$4,800.00 in FY2008 and \$4,800.00 in FY2009 for these purchases. Appropriation for these vehicles will be provided by DF&A, therefore, not included in this request.

The Agency has a pool vehicle, which is used by agents when repairs are required on their personal enforcement vehicles. Since this vehicle is also used by enforcement agents performing sales to

minors compliance checks, it needs to be outfitted with an Arkansas Wireless Information Network (AWIN) Radio in FY2008, which will cost \$9,000.00. Other agency personnel will also use this vehicle when conducting agency business and will need to communicate with the ATCB office or with other enforcement agents in the field.

Two (2) portable radios costing \$8,000.00 are requested in FY2009 that will be used by agency personnel who are not issued agency vehicles, as well as personnel who are working metropolitan areas out of the range of their vehicle radios.

In FY2008 a disk duplicator is requested at a cost of \$5,000.00 to allow the agency to mass produce training videos, as well as publish our Rules and Regulations and Statutes, to be distributed to Arkansas retailers and wholesalers doing business in the State of Arkansas.

Audit Findings

DIVISION OF LEGISLATIVE AUDIT
 AUDIT OF :
 ARKANSAS TOBACCO CONTROL BOARD
 FOR THE YEAR ENDED JUNE 30, 2003

| Findings | Recommendations |
|----------|-----------------|
| None | None |

Employment Summary

| | Male | Female | Total | % |
|-------------------------|------|--------|-------|-------|
| White Employees | 10 | 5 | 15 | 88 % |
| Black Employees | 1 | 1 | 2 | 12 % |
| Other Racial Minorities | 0 | 0 | 0 | 0 % |
| Total Minorities | | | 2 | 12 % |
| Total Employees | | | 17 | 100 % |

Publications

A.C.A 25-1-204

| Name | Statutory Authorization | Required for | | # Of Copies | Reason (s) for Continued Publication and Distribution |
|------|-------------------------|--------------|------------------|-------------|-------------------------------------------------------|
| | | Governor | General Assembly | | |
| None | N/A | N | N | 0 | N/A |

Department Appropriation

Historical Data

Agency Request and Executive Recommendation

| Appropriation | 2005-2006 | | 2006-2007 | | 2006-2007 | | 2007-2008 | | | | 2008-2009 | | | |
|-------------------------------------|-----------|-----|-----------|-----|------------|-----|-----------|-----|-----------|-----|-----------|-----|-----------|-----|
| | Actual | Pos | Budget | Pos | Authorized | Pos | Agency | Pos | Executive | Pos | Agency | Pos | Executive | Pos |
| 2EH Sales to Minors Enforcemnt-Cash | 789,076 | 13 | 845,761 | 13 | 863,157 | 13 | 869,472 | 13 | 869,472 | 13 | 863,472 | 13 | 863,472 | 13 |
| 983 Tobacco Control Brd Operations | 338,854 | 5 | 366,548 | 5 | 373,573 | 5 | 366,850 | 5 | 366,850 | 5 | 366,850 | 5 | 366,850 | 5 |
| Total | 1,127,930 | 18 | 1,212,309 | 18 | 1,236,730 | 18 | 1,236,322 | 18 | 1,236,322 | 18 | 1,230,322 | 18 | 1,230,322 | 18 |

| Funding Sources | | % | | % | | % | | % | | % | | % |
|--------------------------------|-----------|-------|-----------|-------|--|---|-----------|-------|-----------|-------|-----------|-------|
| General Revenue 4000010 | 338,854 | 30.0 | 366,548 | 30.2 | | | 366,850 | 29.7 | 366,850 | 29.7 | 366,850 | 29.8 |
| Cash Fund 4000045 | 789,076 | 70.0 | 845,761 | 69.8 | | | 869,472 | 70.3 | 869,472 | 70.3 | 863,472 | 70.2 |
| Total Funds | 1,127,930 | 100.0 | 1,212,309 | 100.0 | | | 1,236,322 | 100.0 | 1,236,322 | 100.0 | 1,230,322 | 100.0 |
| Excess Appropriation/(Funding) | 0 | | 0 | | | | 0 | | 0 | | 0 | |
| Grand Total | 1,127,930 | | 1,212,309 | | | | 1,236,322 | | 1,236,322 | | 1,230,322 | |

Agency Position Usage Report

| FY2004-2005 | | | | | | FY2005-2006 | | | | | | FY2006-2007 | | | | | |
|-------------------|----------|----------|-------|------------|------------------------|-------------------|----------|----------|-------|------------|------------------------|-------------------|----------|----------|-------|------------|------------------------|
| Authorized in Act | Budgeted | | | Unbudgeted | % of Authorized Unused | Authorized in Act | Budgeted | | | Unbudgeted | % of Authorized Unused | Authorized in Act | Budgeted | | | Unbudgeted | % of Authorized Unused |
| | Filled | Unfilled | Total | Total | | | Filled | Unfilled | Total | Total | | | Filled | Unfilled | Total | Total | |
| 16 | 18 | -2 | 16 | 0 | -12.50% | 18 | 18 | 0 | 18 | 0 | 0.00% | 18 | 18 | 0 | 18 | 0 | 0.00% |

FY2004-2005 two positions were added from an Emergency Supplemental Personal Services Position request, for a Management Project Analyst II, G20, and an Administrative Assistant II, G17. These were subsequently authorized in the 2005 appropriation act.

Analysis of Budget Request

Appropriation: 2EH - Sales to Minors Enforcemnt-Cash

Funding Sources: NTC - Cash in Treasury

The Arkansas Tobacco Control Board administers the Sales to Minors program. This program is responsible for executing the sales to minors checks and enforcing any violations that result from these checks. Funding for this program is made available through a grant from the Arkansas Department of Health and Human Services - Division of Health using Master Tobacco Settlement monies.

A cost of living increase is not incorporated in Base Level pending the outcome of the Classification and Compensation Study. The Base Level request is \$424,937 for FY08 and FY09 for Regular Salaries. FY07 salary levels have been held flat each year for all incumbents. Personal Services Matching may reflect increases in the Base Level due to the Social Security Tax maximum income limit and certain increases in Worker's Compensation and Unemployment Tax rates. Personal Services Matching also includes a \$30 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$350 per month.

The Agency requests Capital Outlay appropriation of \$18,800 in FY08 and \$12,800 in FY09. For FY08, \$9,000 will be used to purchase an Arkansas Wireless Information Network radio for a pool vehicle used by agents when other vehicles are being repaired or maintained and \$5,000 will be used to purchase a disk duplicator to mass produce Sales to Minors training videos and Rules, Regulations, and Statutes for Arkansas retailers and wholesalers. For FY08 and FY09, \$4,800 each year will be used to pay sales tax on four (4) replacement vehicles annually; mileage on the vehicles currently ranges from 75,000 to 130,000 and maintenance costs are excessive. For FY09, \$8,000 will be used to purchase two (2) portable radios to be used by agency personnel when out of range of vehicle radios and other personnel not issued a vehicle radio.

The Exectutive Recommendation provides for Agency Request.

Appropriation

Appropriation: 2EH Sales to Minors Enforcemnt-Cash
Funding Sources: NTC - Cash in Treasury

| Commitment Item | Historical Data | | | Agency Request and Executive Recommendation | | | | | |
|--------------------------------------|---------------------|---------------------|-------------------------|---------------------------------------------|----------------|----------------|----------------|----------------|----------------|
| | 2005-2006 Actual | 2006-2007 Budget | 2006-2007 Authorized | 2007-2008 | | | 2008-2009 | | |
| | | | | Base Level | Agency | Executive | Base Level | Agency | Executive |
| Regular Salaries 5010000 | 367,448 | 424,937 | 391,866 | 424,937 | 424,937 | 424,937 | 424,937 | 424,937 | 424,937 |
| #Positions | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 |
| Personal Services Matching 5010003 | 126,334 | 135,738 | 125,473 | 140,649 | 140,649 | 140,649 | 140,649 | 140,649 | 140,649 |
| Operating Expenses 5020002 | 208,087 | 218,659 | 218,659 | 218,659 | 218,659 | 218,659 | 218,659 | 218,659 | 218,659 |
| Conference & Travel Expenses 5050009 | 11,845 | 19,495 | 19,495 | 19,495 | 19,495 | 19,495 | 19,495 | 19,495 | 19,495 |
| Professional Fees 5060010 | 22,866 | 46,932 | 107,664 | 46,932 | 46,932 | 46,932 | 46,932 | 46,932 | 46,932 |
| Data Processing 5090012 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Capital Outlay 5120011 | 52,496 | 0 | 0 | 0 | 18,800 | 18,800 | 0 | 12,800 | 12,800 |
| Total | 789,076 | 845,761 | 863,157 | 850,672 | 869,472 | 869,472 | 850,672 | 863,472 | 863,472 |
| Funding Sources | | | | | | | | | |
| Cash Fund 4000045 | 789,076 | 845,761 | | 850,672 | 869,472 | 869,472 | 850,672 | 863,472 | 863,472 |
| Total Funding | 789,076 | 845,761 | | 850,672 | 869,472 | 869,472 | 850,672 | 863,472 | 863,472 |
| Excess Appropriation/(Funding) | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 |
| Grand Total | 789,076 | 845,761 | | 850,672 | 869,472 | 869,472 | 850,672 | 863,472 | 863,472 |

The FY06 Actual Expenditures exceed authorized due to Salary Holding appropriation usage for Personal Services Matching adjustment and also due to Motor Vehicle Acquisition fund transfers and Budget Classification Transfer authority to the Capital Outlay line item. The FY07 Budgeted amounts in Regular Salaries and Matching exceed the authorized due to salary and match adjustments during the 2005-2007 biennium.

Change Level by Appropriation

Appropriation: 2EH-Sales to Minors Enforcemnt-Cash

Funding Sources: NTC - Cash in Treasury

Agency Request

| Change Level | | 2007-2008 | Pos | Cumulative | % of BL | 2008-2009 | Pos | Cumulative | % of BL |
|--------------|-------------------|----------------|-----------|----------------|--------------|----------------|-----------|----------------|--------------|
| BL | Base Level | 850,672 | 13 | 850,672 | 100.0 | 850,672 | 13 | 850,672 | 100.0 |
| C01 | Existing Program | 4,800 | 0 | 855,472 | 100.5 | 4,800 | 0 | 855,472 | 100.5 |
| C08 | Technology | 14,000 | 0 | 869,472 | 102.2 | 8,000 | 0 | 863,472 | 101.5 |

Executive Recommendation

| Change Level | | 2007-2008 | Pos | Cumulative | % of BL | 2008-2009 | Pos | Cumulative | % of BL |
|--------------|-------------------|----------------|-----------|----------------|--------------|----------------|-----------|----------------|--------------|
| BL | Base Level | 850,672 | 13 | 850,672 | 100.0 | 850,672 | 13 | 850,672 | 100.0 |
| C01 | Existing Program | 4,800 | 0 | 855,472 | 100.5 | 4,800 | 0 | 855,472 | 100.5 |
| C08 | Technology | 14,000 | 0 | 869,472 | 102.2 | 8,000 | 0 | 863,472 | 101.5 |

Justification

| | |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C01 | Agency requests an increase in Capital Outlay appropriation of \$4,800 each year to pay sales tax on four (4) replacement vehicles each year; mileage on these vehicles currently ranges from 75,000 to 130,000 miles and maintenance costs are prohibitive. |
| C08 | Agency requests a total increase in Capital Outlay appropriation of \$14,000 in FY08 and \$8,000 in FY09. In FY08, \$9,000 will be used to purchase an AWIN radio for a pool vehicle used by enforcement agents when their assigned vehicle is being repaired or receives maintenance and \$5,000 will purchase a disk duplicator to mass produce Sales to Minors training videos and Rules & Regulations & Statutes for Arkansas retailers and wholesalers. In FY09, \$8,000 will purchase two (2) portable radios to be used by agency personnel when out of range of vehicle radios. |

Analysis of Budget Request

Appropriation: 983 - Tobacco Control Brd Operations

Funding Sources: HUA - Miscellaneous Agencies Fund

The Arkansas Tobacco Control Board was established by Act 1337 of 1997 to regulate and issue permits and licenses to any person (except manufacturers) handling, receiving, processing, storing, distributing, taking orders for, soliciting orders of, selling, offering for sale or dealing in, through sale, barter or exchange, any cigarettes or other tobacco products in the State of Arkansas. General Revenues are the sole source of funding for this appropriation.

A cost of living increase is not incorporated in Base Level pending the outcome of the Classification and Compensation Study. The Base Level request is \$228,740 for FY08 and FY09 for Regular Salaries. FY07 salary levels have been held flat each year for all incumbents. Personal Services Matching may reflect increases in the Base Level due to the Social Security Tax maximum income limit and certain increases in Worker's Compensation and Unemployment Tax rates. Personal Services Matching also includes a \$30 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$350 per month.

The Agency requests to reallocate \$3,000 of Operating Expense appropriation by moving it to Conference & Travel Expenses to allow both Auditor/Investigators to attend yearly conferences regarding industry changes and concerns on cigarette and tobacco products, such as gray market cigarettes, changes in federal laws regarding tobacco products, internet sales, black market sales, and other issues.

The Executive Recommendation provides for Agency Request.

Appropriation

Appropriation: 983 Tobacco Control Brd Operations
Funding Sources: HUA - Miscellaneous Agencies Fund

Historical Data

Agency Request and Executive Recommendation

| Commitment Item | 2005-2006 | 2006-2007 | 2006-2007 | 2007-2008 | | | 2008-2009 | | |
|--------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| | Actual | Budget | Authorized | Base Level | Agency | Executive | Base Level | Agency | Executive |
| Regular Salaries 5010000 | 215,795 | 228,740 | 237,746 | 228,740 | 228,740 | 228,740 | 228,740 | 228,740 | 228,740 |
| #Positions | 5 |
| Personal Services Matching 5010003 | 59,258 | 67,019 | 65,038 | 67,321 | 67,321 | 67,321 | 67,321 | 67,321 | 67,321 |
| Operating Expenses 5020002 | 60,883 | 63,789 | 63,789 | 63,789 | 60,789 | 60,789 | 63,789 | 60,789 | 60,789 |
| Conference & Travel Expenses 5050009 | 1,995 | 2,000 | 2,000 | 2,000 | 5,000 | 5,000 | 2,000 | 5,000 | 5,000 |
| Professional Fees 5060010 | 923 | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 |
| Data Processing 5090012 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Capital Outlay 5120011 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 338,854 | 366,548 | 373,573 | 366,850 | 366,850 | 366,850 | 366,850 | 366,850 | 366,850 |
| Funding Sources | | | | | | | | | |
| General Revenue 4000010 | 338,854 | 366,548 | | 366,850 | 366,850 | 366,850 | 366,850 | 366,850 | 366,850 |
| Total Funding | 338,854 | 366,548 | | 366,850 | 366,850 | 366,850 | 366,850 | 366,850 | 366,850 |
| Excess Appropriation/(Funding) | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 |
| Grand Total | 338,854 | 366,548 | | 366,850 | 366,850 | 366,850 | 366,850 | 366,850 | 366,850 |

The FY07 Budgeted amount in Personal Services Matching exceeds the authorized due to matching rate adjustments during the 2005-2007 biennium.

Change Level by Appropriation

Appropriation: 983-Tobacco Control Brd Operations

Funding Sources: HUA - Miscellaneous Agencies Fund

Agency Request

| Change Level | | 2007-2008 | Pos | Cumulative | % of BL | 2008-2009 | Pos | Cumulative | % of BL |
|--------------|-------------------|-----------|-----|------------|---------|-----------|-----|------------|---------|
| BL | Base Level | 366,850 | 5 | 366,850 | 100.0 | 366,850 | 5 | 366,850 | 100.0 |
| C04 | Reallocation | 0 | 0 | 366,850 | 100.0 | 0 | 0 | 366,850 | 100.0 |

Executive Recommendation

| Change Level | | 2007-2008 | Pos | Cumulative | % of BL | 2008-2009 | Pos | Cumulative | % of BL |
|--------------|-------------------|-----------|-----|------------|---------|-----------|-----|------------|---------|
| BL | Base Level | 366,850 | 5 | 366,850 | 100.0 | 366,850 | 5 | 366,850 | 100.0 |
| C04 | Reallocation | 0 | 0 | 366,850 | 100.0 | 0 | 0 | 366,850 | 100.0 |

Justification

| | |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C04 | The agency requests to move \$3,000 of appropriation each year from Maintenance & Operations appropriation to Conference and Travel appropriation so that both Auditor/ Investigators can attend yearly conferences regarding industry changes and concerns on cigarette and tobacco products, such as gray market cigarettes, changes in federal laws regarding tobacco products, internet sales, black market sales, etc. |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|